

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BEHROUZ KAHLILY,)	
)	
Plaintiff,)	No. 08 C 1515
)	
v.)	Judge Kendall
)	
CHICAGO POLICE OFFICER,)	Mag. Ashman
R. FRANCIS, Star # 5276, CITY OF)	
CHICAGO, Illinois Municipal)	
Corporation,)	
)	
Defendants.)	

**DEFENDANT CITY OF CHICAGO'S MOTION TO DISMISS COUNTS III, IV
and VII OF PLAINTIFF'S COMPLAINT, AND TO DISMISS ALL CLAIMS FOR
PUNITIVE DAMAGES AGAINST INDIVIDUAL DEFENDANT FRANCIS**

1. Defendant City of Chicago ("City"), by and through its attorney, Mara S. Georges, Corporation Counsel for the City of Chicago, respectfully moves this Court, pursuant to Rule 12(b)(6), to dismiss Counts III ("Violation of Property Rights"), IV ("Equal Protection"), and VII (untitled) of Plaintiff's Complaint of the Federal Rules of Civil Procedure for failure to state a claim and to dismiss all claims for punitive damages against Individual Defendant R. Francis ("Officer Francis") because a claim for punitive damages does not survive the death of a defendant.

2. Count III ("Violation of Property Rights") should be dismissed because there has been no Fifth Amendment taking under the facts alleged in Plaintiff's Complaint and Plaintiff has not exhausted state law remedies.

3. Court IV ("Equal Protection") should be dismissed because the equal protection class-of-one theory does not apply to Plaintiff's arrest.

4. Count VII should be dismissed because there is no such tort as “willful and wanton” conduct.

5. All claims for punitive damages against Officer Francis should be dismissed because a claim for punitive damages does not survive the death of the Defendant.

6. In support of the instant motion, Defendant has submitted an accompanying Memorandum, which Defendant incorporates hereto this motion.

DATED: August 8, 2008

Respectfully submitted,

City of Chicago

Mara S. Georges
Corporation Counsel

By: /s/ Christopher A. Wallace
Christopher A. Wallace
Assistant Corporation Counsel
Attorney for Defendant City of Chicago

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CERTIFICATE OF SERVICE

I, Christopher Wallace, hereby certify that on August 8, 2008, I served a true and correct copy of Defendant City of Chicago’s Motion to Dismiss Counts III, IV and VII of Plaintiff’s Complaint and To Dismiss All Claims for Punitive Damages Against Individual Defendant Francis by filing the same before the Court via the ECF system.

/s/ Christopher Wallace
Christopher Wallace